

November 15, 2012

EXHIBIT NO. 252.

Dear Commissioners:

As you know, we have been working for the past year within the formal Environmental Critical Area (ECA) Ordinance Review process to correct a shortcoming in the current Code that has had a disproportionate impact on our family. Although we have provided a substantial amount of information and public comment throughout the proceedings, we submit for your convenient review the following summary of the hardship caused by the current Code, and of the ECA Code correction we are requesting the Commission to approve at this time:

We have lived in Sammamish for 13 years. Nearly 10 years ago we purchased two lots along the shores of Beaver Lake. We enjoyed going there and boating on the Lake for many years and sharing the property with our friends and family. As we started building a home to replace a small cabin on one lot and prepared to sell the vacant parcel to finance the building, the City's Department of Community Development (DCD) informed us that we had a "wetland" on the vacant parcel. Because there was no "wetland" mapped or recorded when we did our due diligence before purchasing the land, we engaged an expert who advised us the area in question did not qualify as a wetland, but was caused by diverted storm water. DCD not only vigorously disagreed with our expert, but also challenged his credentials. We were directed to get a "qualified" expert, so we hired Environ, a wetland biology firm that previously had worked with DCD. The firm provided us with a formal written wetland determination, accepted by DCD, which concluded that although there is a wetland on our property, that wetland is small (less than 4,000 sf) and isolated from other wetlands and water bodies, with very low environmental function and value. The 3,800 sf wetland has no significant animal habitat, no frogs, fish eggs, or bird nesting, etc.—no higher environmental value than a typical urban backyard. Although our wetland biologist found that under the state's rating system the area may have some value in adding to water quality, he stressed that the actual value of that function is uncertain and likely overstated because there are no scientific studies testing water quality in wetlands less than 1/4 acre or 10,000 sf.

Unfortunately, because the wetland is located right in the middle of our property, close to the lakefront, with the 50 foot no-disturbance buffers required by the present Code, our property has been significantly devalued (by \$583,000, according to King County Tax Assessor). We have tried to work with DCD to see if there was any way to move or replace the wetland, but DCD insisted they have no flexibility under the existing Code since they believe there is enough room to build a house on the back of the property near the road, away from the lakefront. However, because the lot is heavily treed, that would allow no view of Beaver Lake. With these facts, no one would purchase the property even at the lower price reflecting the wetland.

Since January 2012, we have been participating with the Sammamish Planning Commission's review of the current Code, to seek amendments to give more

flexibility to homeowners like us. We have proposed one very minor amendment that would allow us to preserve the value of our property without harming the environment. Through our research, we discovered that at least a dozen western Washington jurisdictions have adopted ordinances to allow low value wetlands smaller than 4,000 sf to be filled or moved, as long as the property owner mitigates the impacts—unfortunately for us, the existing Sammamish Code has a more restricted exemption for isolated wetlands smaller than 1,000 sf. As a result, we have proposed that the Sammamish Code be amended to increase the size of the exemption to 4,000 sf to add needed flexibility and to address our problem.

To understand the environmental impact of that Code change for Sammamish, we made a Public Records Request to DCD asking how many small wetlands there are in Sammamish that are smaller than 4,000 sf. DCD responded that, although they don't have a complete map of all wetlands in Sammamish, they know of no other wetland besides ours that is smaller than 5000 sf. that has not already been filled or moved. (See, the City's response to our January 2012 Public Records Request and other responses by the City during the Planning Commission's review). Based upon the records produced by DCD, the only known environmental impact of the proposed Code change would be to the 1/10 acre area on our property--out of the reported 530 acres of wetlands in Sammamish—a negligible cumulative impact, especially given its low ratings, yet it would greatly impact the value of our property.

At this time, we urge the Planning Commission not to delay further but to approve the attached draft Amendment (also circulated by Megan last week), which tracks both of the options the City has proposed in its draft 3-19d, but makes both options available up to the same 4000 sf level. Although we are disappointed that DCD has not been more supportive of the 4,000 sf threshold, we do appreciate the City's proposal to add code flexibility through buffer reduction, and we have preserved the substance of that proposal in our revised draft Amendment.

The attached draft also increases to 4000 sf the 2500 sf wetland avoidance threshold proposed by the City's draft 3-19d, to make it consistent with the Code update we have requested throughout the Planning Commission process (and as was originally delineated in the Major Item advanced by the Planning Commission in June). Not surprisingly, our principal objection to the 2500 sf threshold proposed by DCD is that it not only offers absolutely no added flexibility to Sammamish, but that it doesn't even help to resolve our problem. The 2500 sf level would benefit no one, given that the public record indicates the City has not identified any property owner with a low function wetland between 1000 and 2500 sf.

To the extent that there are concerns that Best Available Science (BAS) does not support exempting small wetlands, bear in mind that the key is not the size but the function. We are not seeking greater flexibility for small wetlands of high value—rather, we are urging the Planning Commission to recommend to the City Council a regulation that allows the City and property owners to make better use of the

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Western Washington Wetland rating system, presumably based upon BAS, to add flexibility when it is determined that a small wetland is of limited value so that greater weight can be given to the rights of property owners and other goals of GMA.

Finally, in response to questions about the likelihood of DOE's approval of this proposed change:

- (1) We provided you last week with information (including the excerpted Renton City ordinance) to demonstrate that DOE, less than 12 months ago, approved a SMP with a very similar provision for low function wetlands smaller than 4000 sf with attendant mitigation requirements.
- (2) Further, although attorney Brent Carson informed Mssrs. Gurol and Maxim that, based upon his experience and his conversation with Mr. McGraner at DOE, it is unlikely that DOE would challenge the adoption of this proposed Amendment, Mr. Gurol is arranging a meeting with DOE to be attended by DCD staff and Carson and myself to discuss our proposed amendment in light of DOE's approval of the Renton SMP a year ago, and the fact that this approach is in place with numerous other cities and counties in our region.
- (3) Finally, we also compiled and provided to you last week (again) code excerpts from each of 11 other local jurisdictions of which we are aware that have similar provisions, most of which seem to track in form and substance guidance from DOE referenced in most of the correspondence on record from DOE.

We again request the Planning Commission to approve the Amendment in the form attached.

Thank you for your consideration and assistance,

David and Megan Gee

21A.50.320 Wetlands-Development Flexibilities

1. Isolated wetlands with an area of up to 1,000 square feet may be exempted from the provisions of SMC 21A.50.290 and may be altered by filling or dredging if the City determines that the cumulative impacts do not unduly counteract the purposes of this chapter and are mitigated pursuant to an approved mitigation plan.
2. Isolated category III and IV wetlands with an area ~~between of more than~~ 1000 square feet and up to ~~2,500-4,000~~ square feet may be exempted from the provisions of SMC 21A.50.290 and may be altered, provided:
 - a) A critical area study is prepared that includes a review of the existing functions that the wetland provides, and determines ~~how the isolated wetland should be managed for ecological function of the watershed as a whole that:~~
 - i. The wetland is not associated with a riparian corridor; and
 - ii. The wetland is not part of a wetland mosaic; and
 - iii. The wetland scores 15 points or less for habitat in the adopted Western Washington Rating System; and
 - iv. The wetland does not contain habitat identified as essential for local populations of priority species as identified by Washington Department of Fish and Wildlife.;~~and~~
 - b) ~~Mitigation to replace lost~~ Mitigation to replace lost wetland functions and values shall be mitigated pursuant to an approved mitigation plan, consistent with SMC 21A.50.310. ~~shall be prepared for review and approval by the City.~~
3. Buffers may be reduced to 15 feet for Category III and IV wetlands with a total area of 4,000 square feet or less~~may have the buffer reduced to 15 feet,~~ provided:
 - a) A critical area study is prepared that includes a review of the existing functions that the wetland provides, and determines that:
 - i. The wetland is not part of a wetland mosaic; and
 - ii. The wetland scores 15 points or less for habitat in the adopted Western Washington Rating System.;~~and~~
 - b) The buffer functions associated with the area of the reduced buffer are mitigated through the enhancement of the wetland, the remaining on-site wetland buffer area, and/or other adjoining high value habitat as needed to replace lost buffer functions and values.;~~and~~
 - c) ~~No subsequent buffer reduction or averaging is authorized.~~